IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 793 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE STATE OF GUJARAT - Appellant(s)
Versus
RATNABHAI BHAVABHAI RABARI & 3 - Opponent(s)

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Appearance :

MR IM PANDYA APP for Appellant(s) : 1,
None for Opponent(s) : 1 - 4.

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 24/04/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE BANKIM.N.MEHTA)

1. The appellant – State has preferred this

appeal under Section 378 of the Code of Criminal Procedure,1973 and challenged the judgment and order of acquittal rendered on 24-1-2005 by the learned Addl. Sessions Judge, 3rd Fast Track Court, Banaskantha at Palanpur in Sessions Case No. 4 of 2001 acquitting the respondent – accused for the offences punishable u/s 323, 504, 506(2) and 114 of the I.P. Code, u/s 3 (1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to 'the Atrocities Act').

2. In brief, the prosecution case was that complainant Kanjibhai Bhikhabhai Vankar was a member of scheduled caste and was managing the affairs of Satkalyan Samuhik Kheti Sahakari Mandali Ltd., at Dhanadha, Taluka Palanpur, District Banaskantha (hereinafter referred to as 'the society') and was also doing agricultural work. The society had employed two watchmen for agricultural operations. On 29-10-1999 at about 4-00 p.m. when the complainant went to inquire about agricultural operation, the accused were head-breaking with the witnesses and trying to encroach upon the agricultural land and

hence the complainant tried to intervene. Therefore, the accused intentionally insulted the complainant by uttering derogatory words referable to caste by saying that the land does not belong to his father and gave abuses and also gave threats to kill the complainant and gave push to the complainant as a result thereof complainant fell down and and injuries were caused to the watchmen by inflicting stick blows by the accused.

3. On the basis of complaint given before the Police Sub-Inspector, Palanpur Police Station, offence was registered as II CR No. 127 of 1999 for the offences punishable u/ss 323, 504, 506(2) and 114 of the I.P.Code and u/s 3 (1) (x) of The Atrocities Act, by Palanpur Taluka Police Station and investigation was started. During investigation statement of witnesses were recorded, panchaanama of scene of offence was drawn and the accused were arrested.

4. On completion of investigation, charge sheet was laid before the Court of the learned Chief Judicial Magistrate, Banaskantha at Palanpur. As the offence was exclusively

triable by the Special Court, the case was committed to the Sessions Court, Banaskantha at Palanpur and it was registered as Sessions Case No. 4 of 2001. The learned Special Judge (Atrocities), Banaskantha at Palanpur framed charge Exh. 4 against the accused for the offences punishable u/ss 323, 504, 506(2) and 114 of the I.P.Code and u/s 3 (1) (x) of the Atrocities Act. The charge was read over and explained to the accused who pleaded not guilty and claimed to be tried. Therefore, the prosecution adduced evidence to prove the charge levelled against the accused. On completion of recording of the evidence, the learned trial Judge explained to the accused the incriminating circumstances appearing in the evidence against them. The accused in their further statement recorded u/s 313 of the Code of Criminal Procedure, 1973 denied having committed any offence and stated that false case is foisted upon them.

5. After hearing the learned A.P.P. and the learned advocate for the accused, the learned trial Judge found that the prosecution failed to prove the charge levelled against the accused and therefore acquitted them.

Being aggrieved and dissatisfied with the impugned judgment, State has preferred the present appeal.

6. We have heard the learned A.P.P. for the appellant – State at length and in great detail and also perused the impugned judgment and the record and proceedings of the case.

7. In order to prove the charge, the prosecution examined complainant P.W. 1 Kanjibhai Bhikhabhai Vankar at Exh.16. According to the witness, he is a member of scheduled caste and on or about 29-10-2001 at about 4-00 in the evening accused Ratnabhai beat Sujabhai Gogabhai who was employed as watchman of the society. On hearing uproar he went to the place of incident and found that accused Ratnabhai, accused Ranabhai and accused Aliyaben were present and therefore he scolded them hence, accused Ratnabhai insulted him by uttering certain derogatory words referable to his caste. The witness admitted that the accused were constructing building on Survey Nos. 602 and 607 and the complainant was discharging his duties as Secretary of the Society since last 27 to 28

years and there was dispute regarding the land and the same was pending before the Government. The evidence of this witness also indicates that many cases under the Gujarat Panchayat Act and the cases for encroachment were filed against the accused. The evidence indicates that the watchmen had also filed complaint with regard to the same incident. It also appears from the evidence of this witness that he did not mention in his complaint the derogatory words uttered by the accused. The evidence also indicates that there was dispute about the land occupied by the respondents accused and many cases were filed by the complainant against them since last 25 years. In view of this, possibility of false implication of the respondents cannot be ruled out.

8. The prosecution produced complaint Exh.30. The complaint was filed on 30-10-1999 i.e. on the next day of the incident. It appears from Exh. 31 that offence was registered at 19-40 p.m. on 30-10-1999. Therefore, the complaint was filed after more than 27 hours of the incident. There is no explanation to the delay caused in filing

the complaint. Therefore, in our view, no credence can be attached to the complaint.

9. The prosecution also examined P.W. 2 Motibhai Gogajibhai Rabari at Exh.17. According to the witness, he was a watchman of the society and the incident occurred at 4-00 p.m. on 29-10-1999. The evidence also indicates that accused Ratnabhai tried to encroach upon the agricultural land by diverting cattle in the field and he drove cattle out of the field. According to him, accused Ratnabhai gave stick blow to him. Therefore, accused Ranabhai with spade, accused Vajabhai with stick and wife of accused Ratnabhai with wooden log came there to beat him and on hearing uproar the complainant came there and tried to intervene and therefore, accused Ratnabhai gave abuses and also gave threats to kill the complainant. The witness asserted that the accused did not speak any other words. In view of this evidence, it becomes clear that the accused did not utter derogatory words referable to the caste with an intention to insult the complainant within public view.

13. The evidence also indicates that witness

Sujabhai Gogabhai also lodged compliant on 30-10-1999 and it was registered as I - CR No.126 of 1999 and also admitted that the said complaint and the present complaint are in respect of the same incident.

14. The prosecution also examined Investigating Officer P.W. 6 Gulbasinh Amarsinh Parmar at Exh. 32. The evidence of this witness indicates that two offences were registered in respect of the same incident. However, in view of the fact that one complaint was in respect of the offence under the provisions of the Atrocities Act separate investigation was carried for both the offences. However, the investigating agency did not collect any evidence to indicate that the complainant was a member of scheduled caste.

15. On examination of the evidence, it appears that the prosecution did not adduce any evidence to prove that complainant Kanjibhai Bhikhabhai Vankar belonged to a member of scheduled caste. Therefore, the prosecution failed to prove that the provisions of the Atrocities Act are attracted. Therefore, the

respondents could not have been convicted for the offence punishable u/s 3 (1) (x) of the Atrocities Act. Therefore, the learned trial Judge was justified in recording acquittal of the accused for the offence punishable under the provisions of the Atrocities Act.

16. As regards offence punishable under the provisions of the I.P. Code, there is no evidence to indicate that the accused caused injuries to the complainant as alleged by the prosecution. The complainant has also not stated in his deposition that the respondents assaulted him by giving push and he fell down and sustained injuries. There is no medical evidence with regard to injury. Even there is no other reliable evidence to indicate that the accused gave threats to the complainant. The witnesses examined by the prosecution are interested witnesses and their sole evidence without any corroborative evidence cannot be relied upon to connect the respondents with the offence. Therefore, in our view, the learned trial Judge was justified in recording acquittal of the respondents for the offence punishable under the provisions of the I.P. Code.

17. In view of above, leave to appeal is refused and the appeal stands dismissed.

(J.R. Vora, J.)

(Bankim N. Mehta, J.)

/JVSatwara/